Full Meeting of the Public Health and Health Planning Council (PHHPC)

Last week, the Public Health and Health Planning Council held a full council meeting. At the meeting, the PHHPC heard reports from the Department of Health (DOH), the Committee on Public Health, the Committee on Public Health Planning, the Committee on Codes, Regulation and Legislation, and the Committee on Establishment and Project Review (EPRC). Prior to the full council meeting, the PHHPC held special meetings of the Establishment and Project Review Committee and the Committee on Codes, Regulation and Legislation.

During the special meeting of the Establishment and Project Review Committee, the Committee considered several applications for licensure of home health agencies, as well as amendments of certificates of incorporation. During the meeting, there was discussion of the appropriateness of the Committee’s approval of home health agency licensure. Members of the Committee expressed concern over the lack of oversight and surveillance of agencies once they are approved by the PHHPC. Dan Sheppard agreed to provide the Committee with a report containing home health agency data, including geographic distribution of agencies throughout the state at the next meeting of the EPRC.

The Department of Health provided updates from the Office of Primary Care and Health Systems Management (OPCHSM), the Office of Health Insurance Programs (OHIP), and the Office of Public Health. Sally Dreslin from DOH reported on the Department’s activities surrounding the containment of the recent Legionella outbreak in NYC, the Governor’s Capital for a Day program, research funding, the recent DSRIP Symposium, and the upcoming NY State of Health open enrollment period. Dan Sheppard from the OPCHSM informed the Council that the Office continues to make progress on the integration of primary care and behavioral health. Mr. Sheppard also reported that the Office continues to work toward amending regulations to allow extension clinics in homeless shelters to provide primary care services. Elizabeth Misa from OHIP reported that the DSRIP Independent Assessor’s review of PPS plans will be posted by October 13.

Dr. Rugge provided an update on the Committee on Health Planning’s activities surrounding
the upcoming nursing home bed need methodology changes. The Committee, which met last month, identified several issues that need to be addressed in the new methodology, including demographic changes, health care reform implications, and the overall integration of care in the health services continuum. Dr. Rugge announced that the Committee will be holding a half day meeting on November 15 to address these questions.

All applications submitted by the EPRC for approval to the Council were approved, with the exception of Pittsford Pain Center LLC’s application to Establish/Construct an ambulatory surgery center. Pittsford Pain Center LLC’s application was tabled and will be considered again at the next meeting of the PHHPC.

DSRIP Update

Webinar on the DSRIP Opt-Out Process

Last Tuesday, the Department of Health held a webinar to discuss letters that will be sent to Medicaid members along with an opt-out form advising them of their rights to “opt out” of having their health information shared with their DSRIP PPS. Members who opt out of DSRIP information sharing will still be counted in State and PPS performance measures, meaning PPS leads will be responsible for the care the member receives but will not have all care information about the member. Because this would essentially preclude the PPS from providing care coordination or engaging in outreach, DOH has included language in the opt-out letters touting the benefits of the DSRIP program in the hopes that this will dissuade members from opting out. A member’s opt-out status for DSRIP has no effect on information sharing that can otherwise occur between and among the managed care plan and a patient’s health care providers.

Opt-out letters will be sent to all “active Medicaid members”, including dual eligible and Emergency Medicaid individuals. Medicaid members with out of state addresses will not receive the letters. The mailings will occur in two phases. In Phase I, DOH will send letters to 700,000 members in late October who are: HARP eligible; have claims for ambulatory sensitive conditions and avoidable hospital utilization; and were Medicaid eligible as of 9/25. Phase II will involve the sending of more than 5 million letters to members beginning in mid-February 2016. This process will occur over a four-week period based on member county and zip code. After Phase II, ongoing letters will be sent to newly eligible Medicaid members within 60 days after approved eligibility.

If Medicaid members do not opt out within 30 days, they will be considered to have consented to information sharing and their Medicaid data will be shared with the PPS. There is no deadline to opt out though members may opt in or out at any time.

Notably, the Department has determined that letters that are returned to the State because the address was not valid will be considered opt-outs unless they are able to work with managed care plans to find an accurate address to send the letter.

DOH noted they would be creating an FAQ document with answers to technical questions asked during the PowerPoint that were not answered, in addition to other answers provided during the Q&A portion of the webinar.

VBP Regulatory Impact Sub-group Meeting

Last Monday, the Value Based Payment Workgroup’s “Regulatory Impact” Sub-Committee
held its fourth meeting in New York. The Sub-Committee continues to work on the development of details and guidelines for risk assessment review of Medicaid Provider Contracts, which remains the group’s top priority. At the last meeting, the Sub-committee discussed using a 3 tier approach for contract review based on the level of contracting risk, with full capitated agreements comprising the highest level subject to DFS Regulation 164 and its standards for risk transfer between insurers and health care providers. The Sub-committee is also considering several proposed amendments to the Managed Care Model Contract. Proposed guidelines and additional details will be presented at the next Subcommittee Meeting on November 10, 2015.

At Monday’s meeting, the sub-committee discussed three new policy questions, involving:

- HIPAA and State privacy laws, and whether NYS laws should be amended to more fully align (harmonize with federal HIPAA) with the goals of VBP;
- Fraud, Waste, and Abuse (FWA), and what additional program integrity requirements should be enhanced for MCOs and providers to combat potential VBP and FWA; and
- The corporate practice of medicine, and how laws surrounding professional service corporations should be modified to align with VBP.

The sub-committee also agreed to seek legislation which aligns the state anti-kickback and fee splitting laws with the respective federal counterparts.

The next workgroup meeting is scheduled for November 10 in Albany.

Back to Top.

Managed Care Policy and Planning Meeting

Last Thursday, the Department of Health held the monthly Policy and Planning Meeting with the State’s Medicaid Managed Care plans. Some highlights from the meeting include:

- **Behavioral Health Transition**: The BH carve-in went into effect October 1 in NYC. While it is still too early for claims and payment issues to have surfaced, the State is already working to resolve one issue that was discovered during preliminary claims testing related to payments for services provided by unlicensed practitioners in OMH and OASAS facilities being denied by certain plans’ system edits.
- **All Payer Database Pharmacy Data Submission**: Plans have until October 13 to become certified to submit encounter data to the All Payer Database. The State granted plans an additional day (originally due October 12) because of the Columbus Day holiday. This certification is a high priority item for the State. Plans are required to submit encounter data every two weeks for medical claims and daily for pharmacy claims. Enforcement action had been stayed as the transition to the All Payer Database occurred between August and September and plans worked to become certified in all domains. DOH noted that they want the pharmacy encounters up to date so they can be used to bill for manufacturer rebates, the timing of which are critical in management of the Medicaid Cap.
- **Health Home Administrative Service Agreements (“ASA”)**: Plans must revise their existing ASAs with Health Homes to reflect changes to the model ASA. Only NYC plans must eliminate the 3% withhold at this time; upstate plans have until the start of the BH carve-in for the rest of the state (July 1, 2016) to effectuate this change.
- **MCO-PPS Lead Contracts**: DOH will develop a chart illustrating the various contractual programs and obligations that will require managed care plans to enter into contractual arrangements with PPS lead entities in order to allow the State to make various pass through payments for+978 PPSs through plans so that they can take advantage of Federal matching funds.
MLTC: Mandatory enrollment in MLTC eclipsed 150,000 members for the first time in the program’s history (150,202 with most enrollments in partial cap plans (131,280) located in New York City). Final QIVAPP award amounts by provider were sent to MLTC plans at the end of last week. DOH will be sending a survey to MLTC plans to assess the impact of the FLSA Companionship Exemption Rule, which the Supreme Court recently denied a stay of enforcement on. The rule goes into effect October 13, 2015. DOH is trying to use the survey to assessment the financial impact to changes to overtime reimbursement of aides and what adjustments will need to be made to the MLTC rates. DOH expects the adjustments will be completed in January with increased amounts paid retroactively to October.

FIDA: As of October 1, there were 9,065 enrollees in FIDA, of which 2,887 individuals were passively enrolled on October 1, 2015. Thus far, 2,777 IDT meetings have occurred. DOH and CMS made some changes to the provider training requirements, excepting certain network providers from required FIDA Overview training. Providers on the IDT are still required to take the five trainings.

U.S. Supreme Court Denies Stay in FLSA Companionship Exemption Rule

On October 6, 2015, Chief Justice John Roberts of the United States Supreme Court denied Plaintiffs’ motion to stay the decision by the D.C. Circuit Court of Appeals upholding the final rule that will, among other things, prevent third-party employers of homecare workers from availing themselves of the companionship services and live-in domestic worker services exemptions under the Fair Labor Standards Act (“FLSA”).

This denial means that the effective date of the Final Rule cannot be delayed any longer. Therefore, among other requirements set forth in the Final Rule, third-party employers of homecare workers must pay overtime compensation of one and a half times the employees’ regular rate of pay for hours in excess of forty (40) hours per week effective October 13, 2015. In addition, the Final Rule imposes recordkeeping requirement on an employer of a live-in home care worker that includes making, keeping, and preserving a record showing the exact number of hours worked.

Regulatory Updates

Department of Health

Inpatient Rate for Language Assistance Services

On October 7, 2015 the Department of Health issued a notice of adopted rulemaking that amends Subpart 86-1 of Title 10 of the NYCRR. The amendment establishes methodologies for the computation of general hospital inpatient rates for Language Assistance Program (LAP) services based on current base year costs. The rule also establishes which service providers may provide LAP services in order to be eligible for reimbursement. The final rule contains no changes from the proposal published in the October 8, 2014 edition of the NYS Register.

Education Department

Administration of Opioid Related Overdose Treatment and Hepatitis C Tests by Registered
Professional Nurses (RNs)

Last week, the NYS Education Department issued a notice of adopted rulemaking that implements legislative changes to the program enacted during the 2014 Legislative session as well as changes enacted in the SFY 2015-16 Final Budget that authorized educational institutions to participate in the Opioid Overdose Prevention Program as an opioid antagonist recipient. The adopted regulations permit registered nurses (RNs) to administer opioid related overdose treatments, as well as hepatitis C tests pursuant to non-patient specific orders and protocols. The rule also sets forth information that must be included in the non-patient specific orders, as well as the written protocols to be followed in the administration of hepatitis C tests and opioid related overdose treatment.

The regulations apply to school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools. The adopted regulations set forth standards for participation, which include adherence to the Public Health Law §3309, which establishes the Opioid Overdose Prevention Program.

The adopted regulations also establish standards for adequate antagonist supply, as well as staff training for institutions that elect to participate in the program.

The final rule contains no changes from the proposal published in the July 8, 2015 edition of the NYS Register.

Back to Top.

Upcoming Calendar

<table>
<thead>
<tr>
<th></th>
<th>New York State Board of Examiners of Nursing Home Administrators</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Wednesday, October 14</strong></td>
<td>10:30 a.m.</td>
</tr>
<tr>
<td></td>
<td>Department of Health Offices, 875 Central Avenue, Main Conference Room, Albany, NY</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>DSRIP Project Approval and Oversight Panel (PAOP) meeting with the Upstate-based PPS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Monday, November 9 &amp; Tuesday, November 10</strong></td>
<td>Monday, November 9 – All day</td>
</tr>
<tr>
<td></td>
<td>Tuesday, November 19 – Half day</td>
</tr>
<tr>
<td></td>
<td>Empire State Plaza, Egg Convention Center, Hart Theatre Lounge, Albany, NY</td>
</tr>
</tbody>
</table>

Plugged in to Health at Hinman Straub is prepared by Hinman Straub P.C. and is intended to keep our clients informed about health news and Legislative and regulatory developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice. If you prefer not to receive these updates, please alert us so we may remove you from our distribution list. © Hinman Straub P.C. 2015. All rights reserved.